

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

**Chris and Julie Schaap
46641 Lakeview Dr.
Decatur, MI 49045**

WRD: WTR-1145

WRD file No. 08-80-0024-V

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Chris and Julie Schaap and the Water Resources Division (WRD), Michigan Department of Environmental Quality (Department) and shall become effective on the date this Agreement is signed by Chris and Julie Schaap and the WRD (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

RECITALS

By correspondence dated June 5, 2008, the WRD issued a Notice of Violation (Notice) pursuant to Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to Chris and Julie Schaap. The WRD alleged within the Notice that Chris and Julie Schaap placed fill within wetland regulated under Part 303 in an area approximately 300 feet by 200 feet (Alleged Unauthorized Activities) on vacant property located adjacent to Lake of the Woods. The vacant property is further located just west of Lake of the Woods Drain, on the north side of 86th Avenue in Section 24 of Hamilton Township, Van Buren County (Property).

The WRD requested within the Notice, (08-80-0024-V) that all Alleged Unauthorized Activities on the Property cease and desist and that the area affected by the Alleged Unauthorized Activities be restored to previous wetland grades by removing the fill material.

Chris and Julie Schaap owned or had control of the Property and the WRD alleges had performed the Alleged Unauthorized Activities without a permit required under Part 303.

Chris and Julie Schaap and the WRD acknowledge that prior to the placement and spreading of fill material on the Property there existed wetlands regulated (Regulated Wetland) by the State of Michigan under Part 303. The WRD alleges that the Alleged Unauthorized Activities resulted in the placement of fill material within 1.38 acres of regulated wetland on the Property.

Following issuance of the June 5, 2008, Notice, Chris and Julie Schaap voluntarily removed unauthorized fill and restored to original grade, to the satisfaction of the WRD, approximately 0.96 acres of the 1.38 acres of the Property that the WRD considers regulated wetland.

Chris and Julie Schapp dispute the wetland character and regulatory status of the remaining 0.41 acres of the 1.38 acre area of the Property located in the vicinity of a previously existing building site. By entering into this Consent Agreement, the WRD will not require Chris and Julie Schaap to remove fill or undertake additional restoration activities within the 0.41 acre area in dispute.

The WRD and Chris and Julie Schaap desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings; and

This Agreement identifies the necessary actions to be taken by Chris and Julie Schaap and the WRD, and imposes certain conditions upon performance of these actions. Successful completion of the terms of this Agreement will, in the opinion of the WRD, meet the statutory provisions of Part 303, and thereby resolve those allegations set forth in the Notice.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

COMPLIANCE AND IMPLEMENTATION SCHEDULE

SITE RESTORATION REQUIREMENTS

1. Chris and Julie Schaap agree to remove a previously existing building foundation and fill from a 0.024 acre area to the adjacent wetland grade, as shown in Exhibit A. Restoration of the 0.024 acre area shall be completed within 30 days of the effective date of this Agreement.
2. Chris and Julie Schaap agree to grant a conservation easement over approximately 3.5 acres of wetland on the Property, as shown in Exhibit A. The Conservation Easement shall be conveyed to the Department and provided to the WRD within 30 days of the effective date of this Agreement, on the form attached as Exhibit B. Chris and Julie Schaap shall provide as part of the conservation easement a legal description for the parcel of land to be included within the conservation easement and recording fees.

WRD PERMIT REQUIREMENTS

3. Chris and Julie Schaap agree to submit to the WRD, within 30 days of the Effective Date of this Agreement, a permit application, the \$100 application fee and a site plan for the Property along with a description of activities and estimates of fill material required to construct a 16 foot base width driveway through wetland to access the designated area shown in Exhibit A.
4. Within 30 days of the submittal of the application and fee, the WRD shall review the information submitted with the application and notify Chris and Julie Schaap, in writing, of any additional information necessary to complete the processing of the application.
5. Within 15 days after receiving the WRD's notice identified in Paragraph 4 of this Agreement, Chris and Julie Schaap, shall submit the information required by the WRD to complete the application
6. The WRD shall complete processing of the application in accordance with the statutory requirements of Part 303.

7. If the WRD determines that a permit can be issued, the WRD shall issue the permit to Chris and Julie Schaap.
8. Chris and Julie Schaap shall commence the activities authorized by the permit within 30 days following issuance of the permit and complete all required provision of the permit within 24 months thereafter.
9. If the WRD determines through the application review process that a permit cannot be issued to Chris and Julie Schaap, then this Agreement shall be deemed null and void. In such event, the WRD reserves the right to pursue all available enforcement options as provided by law. Chris and Julie Schaap reserves the right to contest the denial of the application through the Department's administrative hearing process or as otherwise provided by law.
10. All notices, applications, reports, and any other submittals required to be provided by Chris and Julie Schaap to the WRD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Charles S. Dodgers
Michigan Department of Environmental Quality
Water Resources Division
350 Ottawa NW
Grand Rapids, Michigan 49503

GENERAL PROVISIONS

11. **PROPERTY ACCESS:** WRD staff shall have access to the Property to inspect and determine compliance with this Agreement. The WRD shall provide a minimum of a 24 hour advance notice to Chris and Julie Schaap prior to inspection of the Property.
12. **SETTLEMENT PENALTY PAYMENT:** Chris and Julie Schaap agree to pay an administrative settlement amount of \$2,000 to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of the effective date of this Agreement. Payment is to be made by certified check payable to the "State of Michigan." To insure proper credit, the payment made pursuant to this Agreement must include "Payment Identification: WTR - 1145. This payment shall be sent to:

Michigan Department of Environmental Quality
Cashiers Office - WRD
P.O. Box 30657
Lansing, Michigan 48909

13. **STIPULATED PENALTIES:** Chris and Julie Schaap shall pay stipulated penalties of One Hundred (\$100.00) Dollars per day for failure to comply with the provisions of Paragraphs 1 through 12 of this Agreement. Chris and Julie Schaap upon receipt of a notice of any violation governed by this provision, shall have a ten (10) day right to cure the violation before the imposition of any penalty under this provision.

14. **STIPULATED PENALTY PAYMENT:** To insure timely payments of any stipulated penalties provided in Paragraph 13 of this Agreement, Chris and Julie Schaap shall pay an interest penalty to the State of Michigan for failure to make a timely payment. This interest penalty shall be based upon a rate of 12 percent per year compounded annually, using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally paid in full. All payments associated with this Paragraph 14 shall be paid in the form of a cashiers check payable to the "State of Michigan", and sent to:

Michigan Department of Environmental Quality
Cashiers Office - WRD
P.O. Box 30657
Lansing, Michigan 48909

15. **PENALTY PAYMENT DISPUTE:** Chris and Julie Schaap agree not to contest the legal basis for the penalty assessed pursuant to Paragraph 12 of this Agreement. Chris and Julie Schaap also agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 13 of this Agreement, but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by the WRD of stipulated fines is made. Chris and Julie Schaap and the WRD agree this does not preclude the possibility of informal resolution of disputed issues directly between Chris and Julie Schaap and the WRD.
16. **RESOLUTION OF WRD VIOLATION NOTICE:** As part of the successful completion of the terms of this Agreement, the WRD shall deem resolved the June 5, 2008, Notice and close WRD complaint number WRD File No. 08-80-0024-V.
17. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Chris and Julie Schaap shall not conduct any activity within regulated wetlands except as provided by this Agreement, or as authorized by separate permit issued by the WRD. This Agreement does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
18. **FORCE MAJEURE:** Chris and Julie Schaap shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events, which constitute a "Force Majeure" event. For the purpose of this Agreement, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Chris and Julie Schaap, such as an "Act of God", untimely review of permit applications or submissions by the WRD or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by Chris and Julie Schaap's due diligence, and that delay the performance of an obligation under this Agreement. "Force Majeure" does not include, among other things, unanticipated or increased costs, failure to secure funding, change in financial circumstances, or failure to obtain a permit or license as a result of Chris and Julie Schaap's actions or omissions.
19. **FORCE MAJEURE NOTICE:** Chris and Julie Schaap shall notify the WRD by telephone within 48 hours of discovering any event, which causes delay in their compliance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten calendar days, and shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Chris and Julie Schaap to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Chris

and Julie Schaap to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.

20. **ASSIGNMENT OF RIGHTS**: This Agreement shall be binding on the parties, their officers, servants and employees. In the event that Chris and Julie Schaap sells or transfers any interest in this Property, Chris and Julie Schaap shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Chris and Julie Schaap to complete the work required by this Agreement and the work to be allowed by the permit.
21. **AGREEMENT AMENDMENTS**: This Agreement may be amended or revoked at any time by a written agreement executed by all parties to this Agreement. No change or modification to the Agreement shall be valid unless in writing and signed by all parties to this Agreement.
22. **DISPUTE RESOLUTION**: Both Parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Agreement prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
23. **DENIAL OF LIABILITY**: Nothing contained in this Consent Agreement shall be construed as an admission of liability or wrong doing by Chris and Julie Schaap. The WRD and Chris and Julie Schaap agree that the signing of this Agreement is for settlement purposes only.
24. **AGREEMENT PROVISIONS**: The invalidity or unenforceability of any particular portion of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if invalid or unenforceable provisions were omitted.
25. **GOVERNING LAW**: This Agreement shall be executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
26. **TERMINATION OF AGREEMENT**: This Agreement shall remain in full force for a period of at least 5 (five) years. This Agreement may remain in full force for an unspecified time period contingent upon successful completion of all requirements of this Agreement. This Agreement shall terminate only upon written notice of termination issued by the WRD Chief. Prior to issuance of a written notice of termination, Chris and Julie Schaap shall submit a request consisting of a written certification that Chris and Julie Schaap has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.
27. **ENTIRE AGREEMENT**: This Agreement constitutes the entire Agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof.

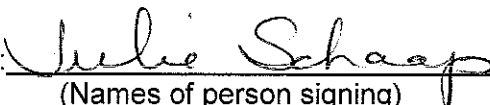
IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date first above written. The undersigned certify they are fully authorized by the party they represent, to enter into this Consent Agreement and to legally bind that party to this Agreement.

Chris Schaap,

By: 
(Names of person signing)

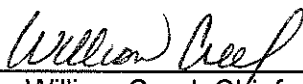
Date: 9-7-11

Julie Schaap,

By: 
(Names of person signing)


Date: 9-7-11

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

By: 
William Creal, Chief
Water Resources Division

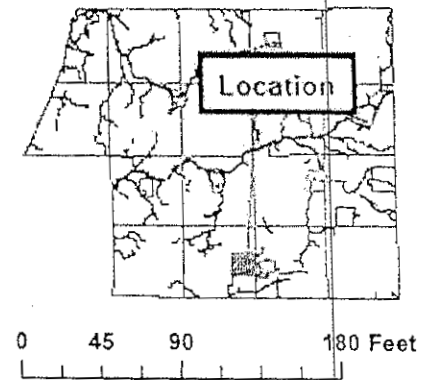
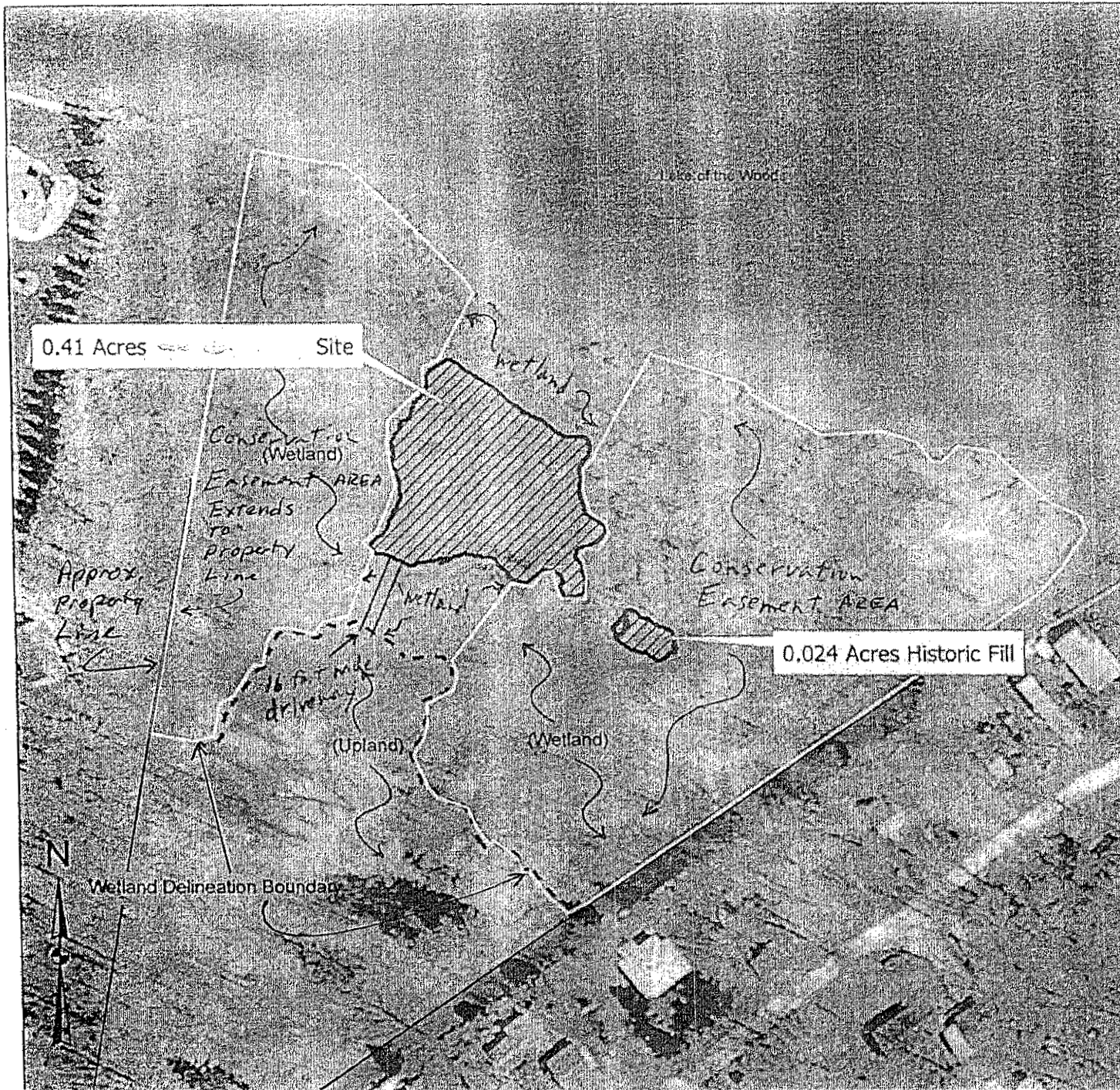
Date: 9/16/11

APPROVED AS TO FORM:

By: 
Robert P. Reichel
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

Date: 9-15-11

Exhibit A
08-80-0024-V
Schaap Property
Hamilton Township
Section 24
Van Buren County



Wetland Delineation, Building Site, and Historic Fill areas were determined onsite by DEQ-WRD staff on 2007 Aerial Photograph

Map By: Ernest Sarkipato
Environmental Engineer
Water Resources Division

Map Date: July 18, 2011

